Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition for Forbearance From	)	**WC Docket No. 03-157**
The Current Pricing Rules for	)	
The Unbundled Network	)	
Element Platform	)	

Petition For Expedited Forbearance of the Verizon Telephone Companies

The New Jersey Board of Public Utilities (Board) submits the following comments in response to the July 1, 2003 petition filed by the Verizon telephone companies in connection with the above-referenced matter.

In its petition, the Company seeks expedited forbearance pursuant to Section 10 of the Telecommunications Act of 1996. Specifically, the Company requests that the Federal Communications Commission (FCC) "forbear from its decision permitting UNE-P carriers to collect per-minute access charges from long distance carriers … and [ ] forbear from applying its current TELRIC pricing rules to the so-called UNE-P platform." (Verizon Petition at i)

Verizon's request cannot and should not be entertained by the FCC. It is both procedurally and factually flawed and is an attempt to circumvent the FCC's rulemaking process. As an initial matter, Verizon seeks in an expedited fashion to dismantle the FCC's own rules by preventing CLECs from collecting access charges and purchasing UNE-P at lawful cost-based rates. The FCC labored long and hard to come up with a fair and equitable pricing methodology that would compensate ILECs for the use of their networks. Applying the TELRIC standard to UNE-P has been and continues to be appropriate.[1] Verizon's request should be denied.

[1] In its petition, Verizon argues that UNE-P is a regulatory construct that was never envisioned by the Act or the FCC's own rules. The Company conveniently omits from its discussion its obligation under §51.315 of the FCC's rules that requires the ILEC to "unbundled network elements in a manner that allows requesting telecommunications carriers to combine such elements in order to provide a telecommunications service." UNE-P clearly is just one such combination contemplated in the rules.

In addition, we are troubled with Verizon's request to reformulate pricing of the UNE-P, replacing it with a structure more akin to the FCC's existing resale standard, which to date has proven to be an unrealistic entry strategy. Revising UNE-P pricing, to a level acceptable to Verizon through this type of filing, could be tantamount to eliminating it as an option altogether.

Just a few short months ago, the FCC concluded its Triennial Review and has recently indicated that it intends to initiate a review of the TELRIC methodology that is in part the subject of Verizon's petition. Without a signed Order from the FCC in the Triennial Review and without direction from the FCC on its impending TELRIC review, Verizon is beginning a full court press to influence the direction of a proceeding when the issues and parameters have yet to be defined. Verizon's request is inappropriate and is nothing more than an attempt to gain an advantage over its competitors by defining the scope of the proceeding before it begins and forcing its potential competitors into a defensive position.

Interestingly, the FCC Triennial Review decision already contemplates that unbundled switching, and hence UNE-P, may be eliminated for certain types of customers. However, until an order is issued by the FCC, states will be unable to begin their analyses and more importantly, there will be no way for states to measure the impact that the changes may have on the current state of competition and the public interest. But Verizon still seeks to cloud the issue by asking for new or reformulated rules during the pendency of a proceeding to address this issue even though it remains unclear what the revised rules will bring. To be sure, Verizon's request to redefine the pricing construct for UNE-P is basically an attempt to eliminate UNE-P as a viable competitive option.

Approval of Verizon's petition could result in deleterious effects on the overall competitive balance originally envisioned by Congress, the FCC, and the individual states in implementing those policies. Both Congress and the FCC initially recognized the delicate balance that exists between local exchange service, long distance service and the ILEC's ability to exert dominance in the local market. For this very reason, ILECs, such as Verizon, are required to open up their networks to competitors before being allowed to venture into the long distance market.

This tradeoff was a critical component of the Act and the FCC's rules. Both found it necessary to ensure that true competition would develop in all telecommunications markets, but not until there was a level playing field. This tradeoff cannot be changed unilaterally without a full and complete record. The potential result of the instant filing is to upset the delicate equilibrium that the states and the FCC have worked so hard to achieve. Competition is a two-way street, but Verizon seeks to change the rules on an expedited basis to the detriment of the CLECs, by leaving intact its own ability to provide long distance service while reducing, or even completely eliminating the ability of CLECs to compete against it and other ILECs.

The telecommunications industry has long been the subject of regulation. These regulations were determined to be necessary because, as natural monopolies, it was more efficient and economic for one carrier to provide service in a specific service territory than two or more due to economies of scale and scope. While technological advances have made it easier for competing carriers to enter both the local and long distance markets, Congress and the FCC correctly realized that the tradeoffs mentioned above were vital to a vibrant competitive market. To revise or eliminate the existing relationship through this filing, at the very moment the FCC has announced its intention to address these precise issues, is clearly inappropriate for Verizon and the other Regional Bell Operating Companies (RBOCs).[2]

In its petition, Verizon urges the FCC to take the interim steps it suggests to remedy what it describes as "… a number of flaws [in the FCC's current rules] that discourage investment by all carriers, impede competition, and undermine economic growth." (Id. at 1) As stated above, the FCC has announced a review of its TELRIC rules and that is the appropriate vehicle for Verizon to make these arguments. The instant petition is nothing more than an attempt to circumvent the longstanding rulemaking process that affords all parties an opportunity to be heard.

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[2] On July 31, 2003 three RBOCs, Qwest, BellSouth and SBC, filed a similar Joint Petition for Expedited Forbearance piggybacking on Verizon's request. For the reasons articulated herein, the FCC should also deny or reject outright their misplaced request.

For the reasons stated above, the New Jersey Board of Public Utilities urges the FCC to reject the instant petition.

DATED:

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